IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 3148 of 2005(Y)

OS.48/1999 of MUNSIF COURT, KUTHUPARAMBA

PETITIONER:

NITTUR KARTHIYAYANI AMMA,
W/O.CHATHUKUTTY NAMBIAR, MAVULLAKANDIYIL HOUSE,
KEEZHALLUR AMSOM, PERAVOOR DESOM.

BY ADV. SRI.K.V.PAVITHRAN

RESPONDENTS:
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1. PALLIPRAVAN KUNHIRAMAN NAMBIAR,
S/O.APPA NAMBIAR, AGED 70 YEARS, AGRICULTURIST,
KALATHIL VEEDU, KEEZHALLUR AMSOM, PERAVOOR DESOM,
THALASSERY TALUK.

2. NELLIYODAN KANNAN NAMBIAR, S/O.KANNAN,
AGED 60, AGRICULTURIST, R/A. KEEZHALLUR AMSOM,
PERAVOOR DESOM, THALASSERY TALUK.

3. K.P.SADANANDAN, S/O.ACHUTHAN NAMBIAR,
AGED 38, AGRICULTURIST, R/IN RAYRPTH HOUSE,
KEEZHALLUR AMSOM, PERAVOOR DESOM,
THALASSERY TALUK.

4. P.P.BHASKARAN, S/O.KUNHUTTY, AGED 45,
TAILOR BY OCCUPATION, R/IN VANIYANKANDY HOUSE,
KEEZHALLUR AMSOM, PERAVOOR DESOM,
THALASSERY TALUK.

5. NITTUR VEETTIL PRASANTHAN, S/O.NANU,
AGED ABOUT YEARS, R/IN. KIZHAKKE VEEDU,
KEEZHALLUR AMSOM AND DESOM.

BY ADV. SRI.T.A.RAMADASAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF COMMISSIONER REPORT FILED BY ADVOCATE COMMISSIONER IN O.S.NO.48/1999 OF MUNSIFF COURT, KUTHUPARAMBA.
EXT.P2	TRUE COPY OF WRITTEN STATEMENT FILED BY DEFENDANT NOS.1 TO 4 IN O.S.48/1999.
EXT.P3	TRUE COPY OF ADDL.COMMISSION REPORT FILED BY THE ADVOCATE COMMISSIOENR IN O.S.48/1999 BEFORE THE MUNSIFF COURT, KUTHUPARAMBA.
EXT.P4	TRUE COPY OF COMMISION PLAN SUBMITTED BY THE ADVOCATE COMMISSIOENR IN O.S.48/1999 BEFORE THE MUNSIFF COURT, KUTHUPARAMBA.
EX.P5	TRUE COPY OF PLAITN FILED BEFORE THE MUNSIFF COURT, KUTHUPARAMBA.
EXT.P6	TRUE COPY OF PETITION AND AFFIDAVIT.
EXT.P7	TRUE COPY OF THE COUNTER IN I.A.2209/2004.
EXT.P8	TRUE COPY OF ORDER IN I.A.2209/2004 IN O.S. 48/1999 BEFORE THE MUNSIFF COURT, KUTHUPARAMBA DTD.16.11.2004.

TRUE COPY

P.A.TO JUDGE

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PIUS C. KURIAKOSE,J.

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W.P.(C) No.3148 of 2005

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Dated: 20th June, 2007

JUDGMENT

Ext.P8 order by which the learned Munsiff dismissed an application for leave under Order 1 Rule 8 for instituting the suit in a representative capacity against the defendants as persons representing everybody else who is interested in the subject matter is under challenge. The learned Munsiff dismissed the application by Ext.P8 on the reason that the contention of the respondents (defendants 1 to 4) has been consistent that they have nothing t do with the road in question and that it is the newly impleaded 5th respondent and his men who have perpetrated the illegality. Assailing the impugned order Mr.K.V.Pavithran, learned counsel for the petitioner submitted that the contentions of the defendants is only that they have not perpetrated the illegality. But it is not disputed that an illegality which is badly in need of being remedied by decree binding everybody who is interested in the subject matter. In other words, a decree binding on all interested persons is necessary for the redressal of the genuine grievance of the petitioner.

2. Mr.Siby counsel for the respondents would submit that respondents 1 to 4 (defendants 1 to 4) are being unnecessarily made to defend a litigation in which they are not interested. I find some

force in the above submission of the learned counsel. I do not propose to interfere with Ext.P8 since I find that the newly impleaded 5th respondent was not a respondent in the I.A. Even as I confirm Ext.P8 and dismiss the Writ Petition, I permit the petitioner to file a fresh application under Order 1 Rule 8 arraying the additional 5th respondent as a party. Upon receiving such an application, the learned Munsiff will allow the application by granting initial leave and by ordering publication under Order 1 Rule 8. Learned counsel for the respondents would submit that the issue as to whether the respondents are necessary parties and whether the suit is not liable to be dismissed as against them being not maintainable is to be considered as a preliminary issue. If on the basis of the pleadings raised by the respondents it is contended that the respondents are not necessary parties and the suit is not maintainable, the learned Munsiff will formulate an issue on that contention as a preliminary issue and take a decision on that preliminary issue first.

The Writ Petition is dismissed subject to the above directions. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**